

REMARKS/ARGUMENTS

Claims 1, 2, 5, 6, 9, 10, 12, 13, 15-18, 20, 21, 23, 24, 26, 27, 29-32, 34, 35, 37-40, 42, 43, 45-50, 52, 53, 55-58, 60, 61, 63-65, and 67-85 were pending at the time of the mailing of the outstanding Office Action. Claims 31, 32, 34, 35, 37-40, 42, 43, 45-50, 52, 53, 55-58, 60, 61, 63-65, 67-72, 76, and 78-85 have been withdrawn from consideration. By this amendment, no claims have been added or cancelled. Claims 1 and 73 have been amended.

The Applicants reiterate their traversal of the restriction/election requirement and request reconsideration of the species election requirement on the grounds that the species identified by the Examiner are not mutually exclusive. “Where two or more species are claimed, a requirement for restriction to a single species may be proper if the species are mutually exclusive. Claims to different species are mutually exclusive if one claim recites limitations disclosed for a first species but not a second, while a second claim recites limitations disclosed only for the second species but not the first. This may also be expressed by saying that to require restriction between claims limited to species, the claims must not overlap in scope.” (MPEP 806.04(f).)

As stated in the previous response, the limitations of claims 31, 32, 34, 35, 37, and 38 and the dependency of those claims illustrate that the claims overlap in scope and therefore, that the restriction/election requirement is inappropriate. While the limitations of these claims are shown in Figure 1, claims 31 and 32 depend from claims that read on the species of Figure 3 and 4. Similar conflicts are seen in claims 45, 46, 49, 50, 63 or 64, which depend from claims 31 and 32.

Additionally, as also stated previously, the limitations of claims 48, 49, 50, 52, 53, 55, and 56, which recite the presence of V-shaped connecting bars, are shown in Figures 2-4. However, claims 49, 50, 52, 53, 55, and 56 depend from claims that were specific to the species of Figure 1. Therefore, claims 49, 50, 52, 53, 55, and 56 are

impossible to classify as belonging to any of the species identified by the Examiner, due to the overlap between the claims.

Other conflicts between the claims are also observed. For example, the limitations of claims 57, 58, 60, 61, 63, 64, and 65, “the connecting bars engage a central region of the bar element portions and are adapted to the curvature thereof,” are shown in Figures 2 and 3, but claims 57, 58, 60, 61, 63, 64 indirectly depend from claims 31, 32, 34, 35, 37, and 38, which are specific for the species of Figure 1. Claims 69 and 72 provide limitations that are shown in Figures 3 and 4. However, both of these claims depend from claim 67 which reads on the species of Figure 1.

In issuing a restriction requirement, the Examiner is also required to also establish that a serious burden would be placed on the Examiner if the restriction requirement was not made. (MPEP 802.02) The Examiner has failed to do so. At the time of the issuance of the species election requirement in the present application, the application had already been the subject of seven office actions and three Requests for Continued Examination. With such extensive review already having taken place in the application, it is difficult to perceive the burden that continued examination of all the alleged species would pose.

For the reasons set forth above, the Applicants maintain that the present restriction requirement is improper because the species identified by the Examiner are not independent and distinct and because the Examiner has not established an undue burden in maintaining all claims under consideration. Rejoinder of the withdrawn claims is respectfully requested. The Examiner indicated in the outstanding Office Action that claims 1, 2, 5, and 6 are generic. If the Examiner continues to maintain that the species election requirement is proper, the Applicants maintain that claims 23, 24 and 47 do not recite any limitations specific for any particular species and are therefore also generic for all species. Reconsideration of the classification of these claims is respectfully requested.

It should also be noted that while claims 47, 48 and 65 are listed among the withdrawn claims, they are also listed as being rejected as described below. The Applicants maintain that each of these claims read on the elected species, the species of Figure 3, and should therefore be under consideration. Clarification as to the status of these claims is requested.

In the Office Action, the Examiner rejected claims 1, 2, 5, 6, 9, 10, 20, 21, 23, 24, 26, 27, 47 and 48 under 35 USC § 102(e) as anticipated by, or in the alternative, under 35 USC § 103(a) as obvious over Alt (DE 19834956). The Applicants reiterate their previous argument that Alt does not teach or suggest a stent where "...all of the first and second bar element portions of the first annular support portion extend in the longitudinal direction of the stent curvedly in an identical concave or convex arcuate manner..." This element of claim 1 is neither taught nor suggested by Alt, as made clear by the disclosure of the US equivalent of Alt, US 6,398,805 (hereinafter "the '805 patent"). The '805 patent describes Figures that are identical to those provided in Alt (DE 19834956) as having a "multiplicity of openings through the wall of the tube" which are defined by "a network of tangentially interconnected, solely curvilinear struts." These struts extend end to end through the strut with "repetitively alternating crests and valleys..." ('805, Column 4, lines 17-23). Significantly, the '805 patent indicates, "Each of the openings is bounded circumferentially on the tube by an upper curve and a lower curve connected to form a closed curve. *One of these upper and lower curves has a tighter curvature than the other.*" ('805, Column 4, lines 24-27, emphasis added). This arrangement is provided in more detail with reference to Fig. 2, where "an opening in any given row 25" ("annular portion" in the terminology of the present application) is formed by "higher and lower crests 26, 27, respectively " which intersect at least at one side (30) and preferably at both sides (30, 31) of the crests. ('805, Column 6, lines 35-41). The arrangement provides openings that are described as being in the shape of "a ram's head" or "a handlebar moustache or a Dutch winged cap" ('805, Column 4, lines 29-34), and not the highly symmetrical arrangement of bar element portions of the present invention. It is clear that the struts that bound each opening of the '805 patent, and also therefore, of Alt (DE

19834956), have a differing curvature, thereby providing the higher and lower crests. This expressly contradicts the Examiner's interpretation of the Figures as showing bar element portions extending in the longitudinal direction of the stent curvedly in an identical concave or convex arcuate manner, as recited by claim 1.

Additionally, independent claims 1 and 73 have been amended to further distinguish over Alt. These claims now recite that all of the first and second bar element portions of the first annular support portion extend to an identical extent in the longitudinal direction in a non-offset manner. Support for these amendments may be found in each of the Figures. As shown in the Appendix to the previous Office Action, Alt's first and second bar element portions are clearly offset in the longitudinal direction. On examination of Alt, it is clear that such an offset of the first and second bar element portions is necessary to accommodate the previously mentioned differences in curvatures of these elements which creates the "handlebar moustache" or "Dutch winged cap" arrangement. Therefore, Alt neither teaches nor suggests an arrangement of stent elements as recited in the claims which patentably distinguish over Alt. Therefore withdrawal of the rejection of claims 1, 2, 5, 6, 9, 10, 20, 21, 23, 24, 26, 27, 47 and 48 as anticipated by, or as obvious over Alt (DE 19834956) is respectfully requested.

Claims 12, 13, 15-18, 29 and 30 stand rejected as being as being unpatentable under 35 U.S.C. § 103(a) over Alt in view of Hoefer (DE 19840645). The Applicants maintain that the Examiner has not established a prima facie case of obviousness of these claims because neither cited reference teaches or suggests all the elements of these claims. As provided above, Alt does not teach or suggest bar element portions extending in the longitudinal direction of the stent curvedly in an identical concave or convex arcuate manner. Nor does Alt teach or suggest first and second bar element portions of the first annular support portion that extend to an identical extent in the longitudinal direction in a non-offset manner, as also provided above. Likewise, these elements are also not provided by Hoefer.

As stated previously, Hoefer does not provide bar elements portions that are entirely convex or concave over the entire length of the bar element portion as recited in the claims. Hoefer's bar element portions are not curved at all, but are rather a series of straight connected pieces. Therefore, because Hoefer can not provide a teaching or suggestion of a stent having annular support portions in which the direction of curvature changes in the longitudinal direction of the stent as recited in claims 12, 13, 15 and 16.

The Examiner provides no teaching or suggestion for one of skill in the art to combine Alt's stent having concave or convex bar element portions with Hoefer's stent having bar element portions that are a series of straight portions connected together. Therefore, the Applicants maintain that claims 12, 13, 15-18, 29 and 30 patentably distinguish over Alt in view of Hoefer.

Claims 65, 73 and 74 patentably distinguish over Alt in view of Kveen (6,261,319), because neither of these references teach or suggest first and second bar element portions extending in the longitudinal direction of the stent curvedly in an identical concave or convex arcuate manner or first and second bar element portions of that extend to an identical extent in the longitudinal direction in a non-offset manner as described above with regard to Alt. Likewise, claims 75 and 77 patentably distinguish over Alt in view of Kveen in further view of Hoefer for the reasons provided above. Therefore, withdrawal of the rejections under 35 U.S.C. § 103(a) is respectfully requested.

Because one or more generic claims are believed to be allowable, as discussed above, the Applicants also request rejoinder and allowance of the claims of the non-elected species, claims 31, 32, 34, 35, 37-40, 42, 43, 45, 46, 49, 50, 52, 53, 55-58, 60, 61, 63, 64, 67-72, 76, and 78-85.

The outstanding Office Action was mailed on March 6, 2007. The Examiner set a shortened statutory period for reply of 3 months from the mailing date. Therefore, no

petition for an extension of time is believed to be due with this response. Nevertheless, the Applicants hereby make a conditional petition for an extension of time for response in the event that such a petition is required. No fees are believed to be due with this response. However, in the event that a fee for the filing of his response is insufficient, the Commissioner is authorized to charge any fee deficiency or to credit any overpayment to Deposit Account 15-0450.

Respectfully submitted,

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